

Memorandum 2021-43

**Statutes Made Obsolete by Trial Court Restructuring: Part 8
(Draft of Tentative Recommendation)**

Attached for the Commission's consideration is a draft of a tentative recommendation that would implement the Commission's decisions in the latest phase of its work on statutes made obsolete by trial court restructuring.¹

The Commission needs to decide whether to approve the attached draft (with or without revisions) as a tentative recommendation, to be posted to the Commission's website and widely circulated for comment.

In making that decision, the Commission should be aware that the staff recently received a letter from attorney Mark W. Lomax suggesting that the Commission examine the possibility of clarifying the jurisdictional classification of a drug asset forfeiture proceeding. The staff plans to present that letter to the Commission for consideration at the meeting scheduled for November 18, 2021.

The Commission could either approve a tentative recommendation now, or wait until after the November meeting and perhaps also incorporate proposed revisions relating to the jurisdictional classification of a drug asset forfeiture proceeding.

The staff recommends approving a tentative recommendation now, rather than waiting. The jurisdictional classification issue is unrelated to the matters addressed in the attached draft. It could be handled separately, without delaying the work already in progress.

The staff further suggests a comment deadline of December 1, 2021. That would afford approximately sixty days for interested persons to review and comment on the proposal. The Commission could then consider the comments at

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

its December and/or January meetings, depending on the extent of the comments.

If the Commission approves a tentative recommendation at the upcoming meeting, **is the proposed comment deadline (December 1) is acceptable?**

Respectfully submitted,

Barbara Gaal
Chief Deputy Director

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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| <h2>STAFF DRAFT</h2> |
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TENTATIVE RECOMMENDATION

Statutes Made Obsolete by Trial Court Restructuring: Part 8

September 2021

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

California's trial court system was extensively restructured slightly more than twenty years ago. As a result, literally hundreds of provisions throughout the codes became obsolete, in whole or in part.

In 2001, the Legislature directed the Law Revision Commission to review the codes and make recommendations about how to remove the obsolete material. The Commission has been working on this vast code clean-up project ever since.

Almost all of the work has already been done, resulting in the enactment of numerous bills to implement the Commission's recommendations. For various reasons, a few projects remain unfinished.

This tentative recommendation focuses on two areas:

- (1) Statutes relating to judicial benefits; and
- (2) Statutes relating to representation and indemnification of trial courts and trial court personnel.

The proposed reforms are intended to update those statutes to properly reflect the restructuring of the trial court system.

The Commission seeks input on the proposed reforms. The Commission also welcomes suggestions regarding any other provisions that require updating due to trial court restructuring.

This recommendation was prepared pursuant to Resolution Chapter 108 of the Statutes of 2021 and Sections 8298 and 71674 of the Government Code.

1 STATUTES MADE OBSOLETE BY TRIAL
2 COURT RESTRUCTURING: PART 8

3 California’s trial court system was extensively restructured around the turn of
4 the century. The Law Revision Commission is responsible for reviewing the codes
5 and recommending revisions to remove material made obsolete by the trial court
6 restructuring reforms.¹

7 This tentative recommendation is the latest in a long series of proposals to
8 remove such material, almost all of which have been enacted.² The current
9 proposal focuses primarily on two sets of statutes that the Commission set aside
10 for further study in 2002 because stakeholders were still resolving key policy
11 issues and it was too early to resolve which statutory material was obsolete.³

12 Those statutes relate to the following topics:

13 (1) Judicial benefits.

14 (2) Representation and indemnification of trial courts and trial court personnel.

15 Before explaining the proposed legislation relating to each topic, it may be helpful
16 to provide an overview of the trial court restructuring reforms.

17 **Overview of Trial Court Restructuring**

18 In the late 1990’s, California had two kinds of trial courts: municipal courts
19 (with limited jurisdiction, specified by statute) and superior courts (with original

1. Gov’t Code § 71674. Unless otherwise indicated, all further statutory references are to the Government Code.

2. For information about the Commission’s prior work on trial court restructuring, see 2021 Cal. Stat. ch. 117 (implementing two recent Commission recommendations); *Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities*, 46 Cal. L. Revision Comm’n Reports 25, 34-36 (2019) (describing Commission’s role and listing recommendations and enactments) (hereafter, “TCR #6”); CLRC Staff Memorandum 2020-52, pp. 11-12 & Exhibit pp. 43-44 (summarizing work done and work remaining as of late 2020); CLRC Staff Memorandum 2018-5 (summarizing status of work in 2018); First Supplement to CLRC Staff Memorandum 2014-53 (describing numerous projects in detail, many of which are now complete). See also the materials collected at the following urls:

<http://www.clrc.ca.gov/J1405.html>

<http://www.clrc.ca.gov/J1406.html>

<http://www.clrc.ca.gov/J1407.html>

Any California Law Revision Commission document referred to in this tentative recommendation can be obtained from the Commission. Most materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

3. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1, 24-25 (2002) (hereafter, “TCR #1”); see also CLRC Minutes (March 2002), p. 11.

jurisdiction of all other causes).⁴ Those courts were county-operated, funded primarily by the counties, and largely staffed with county employees.⁵

In the next few years, the county-oriented system was uprooted by several major reforms, which sought to improve efficiency, decrease costs, and enhance equity. Those reforms were:

- *Enactment of the Lockyer-Isenberg Trial Court Funding Act.* This 1997 enactment made the state responsible for funding trial court operations, instead of the counties.⁶ The goal was to eliminate disparities in funding from county to county, helping to ensure equal service in courts across the state.⁷
- *Trial court unification.* In 1998, the voters approved a measure that permitted trial court unification on a county-by-county basis: On a vote of a majority of the municipal court judges and a majority of the superior court judges in a county, the municipal and superior courts in that county could unify their operations in the superior court.⁸ By early 2001, the trial courts in all of California's 58 counties had unified.⁹ Each county now has a unified superior court, which handles all trial court operations in that county.
- *Enactment of the Trial Court Employment Protection and Governance Act ("TCEPGA").* This act established a new personnel system for trial court employees, operative on January 1, 2001.¹⁰ Under the new system, trial court personnel became employees of their local superior court, instead of the county.¹¹

Due to the above reforms, numerous statutes throughout the codes became obsolete, in whole or in part. To address that problem, the Legislature directed the Commission to review the codes, identify any such obsolete material, and recommend statutory revisions for removal.¹²

4. See former Cal. Const. art. VI, §§ 4, 5, 10. In the early 1990's, California also had justice courts in some counties. Those courts were eliminated statewide through a ballot measure approved by the voters in 1994. See 1994 Cal. Stat. res. ch. 113 (SCA 7 (Dills)) (Prop. 191, approved Nov. 8, 1994).

5. See, e.g., Senate Committee on Judiciary Analysis of AB 233 (June 10, 1997); *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 76-79 (1998); J. Clark Kelso, Analysis of Existing Court Staffing Statutes (DRAFT: Jan. 24, 2000) (on file with Commission).

6. 1997 Cal. Stat. ch. 850; see generally Sections 77000-77655.

7. See Section 77100(c) ("Local funding of trial courts may create disparities in the availability of the courts for the resolution of disputes and the dispensation of justice."); see also Section 77100(d) ("The method of funding trial courts should not create financial barriers to the fair and proper resolution of civil and criminal actions.").

8. See 1996 Cal. Stat. res. ch. 36 (SCA 4 (Lockyer)) (Prop. 220, approved June 2, 1998).

9. See <https://www.courts.ca.gov/documents/unidata.pdf>.

10. 2000 Cal. Stat. ch. 1010; see Sections 71600-71675.

11. See, e.g., Senate Committee on Judiciary Analysis of SB 2140 (May 9, 2000).

12. See Section 71674.

1 In conducting this massive code clean-up project, the Commission is not
2 authorized to revisit the Legislature’s policy choices on trial court restructuring or
3 other matters. Rather, the Commission’s role is to conform the codes and the
4 California Constitution to the new policies governing California’s trial court
5 system, without disrupting other existing policy choices.¹³

6 **Judicial Benefits**

7 When the Commission first started working on the code clean-up, it prepared a
8 huge tentative recommendation (hereafter, the “2001 tentative recommendation”),
9 which proposed to revise numerous statutes on a wide range of subjects to reflect
10 the trial court restructuring reforms.¹⁴ Some of those statutes related to judicial
11 benefits (benefits that judges receive as part of their compensation package, in
12 addition to their regular salaries¹⁵).

13 After receiving comments on the tentative recommendation, the Commission
14 withdrew the statutes relating to judicial benefits from its proposal, because that
15 area was unsettled and the statutes warranted further study.¹⁶ Since then, there
16 have been many developments in the area, including in particular work by a
17 Judicial Council advisory committee on judicial service,¹⁷ a series of lawsuits over
18 supplemental judicial benefits (extra benefits that some counties provide to local
19 trial court judges in addition to their state compensation),¹⁸ a Judicial Council
20 study on disparities in judicial benefits across the state,¹⁹ and related legislation.²⁰

21 From those developments, especially the legislation on supplemental judicial
22 benefits and the subsequent court decisions upholding that legislation, it is clear
23 that such benefits were *not* made obsolete by the switch from county-funding to
24 state-funding of trial court operations (the Lockyer-Isenberg Trial Court Funding
25 Act). Consequently, statutory references to such benefits do not require revisions

13. See TCR #6, *supra* note 2, at 35 & sources cited therein.

14. Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (Nov. 2001).

15. Since early 2001, all state trial court judges have received the same state salary. Judicial Council of California, *Historical Analysis of Disparities in Judicial Benefits* (Dec. 2009), p. 7 (hereafter, “*Judicial Council Report on Judicial Benefits*”).

16. See CLRC Minutes (March 2002), p. 11.

17. See former Cal. R. Ct. 10.57.

18. *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, 843 Cal.Rptr.3d 242 (hereafter, “*Sturgeon I*”); *Sturgeon v. County of Los Angeles* (2010) 191 Cal.App.4th 344, 119 Cal.Rptr.3d 332 (hereafter, “*Sturgeon II*”); *Sturgeon v. County of Los Angeles* (2015) 242 Cal.App.4th 1437, 195 Cal.Rptr.3d 909 (hereafter, “*Sturgeon III*”).

19. *Judicial Council Report on Judicial Benefits*, *supra* note 15.

20. 2009 Cal. Stat. ch. 9 (SB X2 11 (Steinberg)).

1 to reflect that reform.²¹ Some of the judicial benefit provisions that the
2 Commission set aside in 2001 can be left alone for that reason and because they
3 continue to have ongoing importance.²²

4 Of the remaining judicial benefit provisions that the Commission identified for
5 further study, most appear ready for revisions to reflect trial court restructuring. In
6 particular, the Commission tentatively proposes the following:

- 7 • *Section 53214.5.* In specified circumstances, this section authorizes a county
8 to permit superior and municipal court judges, officers, and attachés²³ to
9 participate in a deferred compensation plan and authorize deductions from
10 their wages for that purpose. Due to trial court unification, there no longer
11 are any municipal courts, much less municipal court judges, officers, or
12 attachés receiving wages from which deductions could be made for a
13 deferred compensation plan. The section should therefore be amended to
14 delete the reference to municipal court personnel.
- 15 • *Section 69894.4.* This section relates to travel expenses of certain court
16 personnel “in each county having a population of over 2,000,000.” It has
17 largely been supplanted by the enactment of the TCEPGA, the Lockyer-
18 Isenberg Trial Court Funding Act, and particularly Section 69505, a
19 contemporaneously-enacted provision on business-related travel expenses of

21. The Commission is not charged with evaluating the merits of providing supplemental judicial benefits. That is the Legislature’s nondelegable, constitutional duty. See *Sturgeon I*, 167 Cal.App.4th at 645, 652-54, 657.

22. See Sections 69894.3, 69907, 69909. Section 69894.3 addresses several topics, not just judicial benefits. The superior court for Los Angeles County reports that the section remains useful despite the trial court restructuring reforms. Although Section 69894.3 does not appear to require revisions to reflect trial court restructuring, it could benefit from a nonsubstantive clarification regarding its application. See note 25 & text accompanying notes 23-25 *infra*.

23. The term “attaché” is “not defined expressly in the code.” *Seidler v. Municipal Court* (1993) 12 Cal.App.4th 1229, 1234. For purposes of a now-repealed municipal court statute (former Section 72002.1), the *Seidler* court examined the statutory scheme and concluded that “the clerk (court administrator), marshal, commissioners, jury commissioner and court reporters are officers of the court, while *subordinate employees which some of these officers are authorized to appoint are attachés.*” *Id.* at 1235 (emphasis added).

A later decision interpreting the same statute explains:

The distinction between attachés and officers is based on one of the fundamental elements of the civil service system: “the practically universal presence of a set of excepted offices and positions termed *exempt* or *nonclassified*. With individual variations, civil service laws normally except designated offices and positions such as elective offices, appointive department heads, confidential assistants and temporary technical consultants.... Some of these exemptions are premised on the desirability of maintaining maximum responsiveness on the part of those holding high-echelon or ‘sensitive’ positions; others on the impracticability of recruitment via civil service.”

Los Angeles County Employees Ass’n, SEIU, Local 660 v. Superior Court (2000) 81 Cal.App.4th 164, 171, *quoting* Placer County Employees Ass’n v. Board of Supervisors (1965) 233 Cal.App.2d 555, 558 (emphasis in original).

trial court judges and employees, as well as the repeal of a section to which it cross-refers (former Section 69894.1).

However, the Commission tentatively recommends retaining the part of Section 69894.4 relating to assignment of an automobile, and updating it to authorize the *court* to determine whether to assign an automobile, instead of the *board of supervisors*. That revision is appropriate given the switch from county-funding to state-funding of trial court operations.

The Commission further recommends replacing the reference to a “county having a population of over 2,000,000,” which is potentially confusing because it does not specify which census to use in determining the population. The proposed amendment would refer instead to a “county of the first class,” which is statutorily defined to be Los Angeles County.²⁴ That construction is consistent with the legislative history of the section.²⁵ Although this revision is unrelated to trial court restructuring, it falls within the Commission’s general authority to recommend corrections of “technical or minor substantive defects.”²⁶

- *Articles 9, 16, 20, 25, and 30 of Chapter 10 of Title 8 (Sections 73640, 73642, 73950, 73952, 74130, 74145, 74340, 74342, 74740, 74742).* Each of these articles consists of (1) a provision stating that the article applies to a particular municipal court district, and (2) a provision specifying benefits for judges of that municipal court district. Due to trial court unification, municipal courts no longer exist. However, there still are former municipal court judges and their beneficiaries, some of whom might be entitled to benefits under one or more of these five articles. It is not clear how long that situation will last, though it has already been more than twenty years since the last trial courts unified.

To ensure that the articles are eventually removed from the codes, but without disrupting any existing rights of former municipal court judges and their beneficiaries, the Commission proposes to add a new provision to each article, which would automatically repeal the article in fifty years, subject to a saving clause that would preserve any rights that still exist under the article at the time of repeal.²⁷ This two-prong approach should provide ample protection, while still avoiding the necessity of revisiting these five articles.

- *Section 77210.* This section pertains to benefits of municipal court judges retired under the Judges’ Retirement System. The Commission proposes to

24. See Sections 28020, 28022.

25. See CLRC Staff Memorandum 2021-28, pp. 4-9 & Exhibit pp. 1-8 (collecting and discussing legislative history materials).

26. Section 8298. The Commission also proposes a similar nonsubstantive clarification of Section 69894.3, for the same reasons.

27. The proposed uncodified saving clause (shown in the proposed legislation *infra*) is the same as the one that the Legislature used, on Commission recommendation, when repealing numerous other provisions that specified employment terms of municipal court personnel. See 2002 Cal. Stat. ch. 784, § 622; see also *TCR #1, supra* note 3, at 20, 566; 2020 Cal. Stat. ch. 210, § 65.

1 treat the section essentially the same way as the five articles just discussed:
2 It would be amended to add a sunset provision, which would repeal the
3 section in fifty years, subject to a saving clause. Again, this two-prong
4 approach should provide ample protection, while making it unnecessary to
5 address the section again.

6 For a few of the provisions relating to judicial benefits, the Commission
7 concluded that it would be better to wait until later to propose revisions to reflect
8 trial court restructuring. For example, Section 69893.7 relates not only to judicial
9 benefits but also to court reporter compensation, an area that is still not ripe for
10 clean-up.²⁸ The Commission plans to address that section comprehensively when it
11 considers the court reporter compensation issues.²⁹

12 **Representation and Indemnification**

13 The 2001 tentative recommendation also included a handful of provisions
14 relating to representation and indemnification of trial courts and trial court
15 personnel.³⁰ Like judicial benefits, that area was unsettled when the Commission
16 considered the comments on the tentative recommendation, so the Commission
17 withdrew those provisions from its proposal for further study.³¹

18 Since then, there have been significant developments in the area. It now appears
19 appropriate to update some of the provisions in question to reflect trial court
20 restructuring and the subsequent developments clarifying the policies applicable to
21 this area.

22 Such updating is necessary for two main reasons:

28. See CLRC Staff Memorandum 2020-39; First Supplement to CLRC Staff Memorandum 2020-39; CLRC Staff Memorandum 2020-15; CLRC Minutes (Aug. 2020), p. 3.

29. See CLRC Minutes (Nov. 2020), p. 5. The Commission also deferred clean-up of the following provisions that pertain to benefits of municipal or justice court judges: Sections 53200.3, 75002, 75029, 75029.1, 75029.5, 75033.5, 75076.2, 75502. See CLRC Minutes (June 2021), pp. 7, 8. Most of those sections are not readily amenable to the two-prong approach described above (addition of a sunset provision plus a saving clause), because they apply to superior courts as well as the courts in question. In such a situation, it would be necessary to maintain multiple versions of the section in the codes for the sunset period: a version with a sunset clause and a new version that refers only to superior courts, which would become operative when the other version is repealed pursuant to the sunset clause. That two-version status would be burdensome and potentially confusing, particularly if the sunset period is lengthy.

30. Sections 811.9, 990.2, 26524, 26529, 27647, 27648. For many years, this legislation was commonly known as the “Tort Claims Act.” The California Supreme Court rejected that approach in 2007, pointing out that “Government Claims Act” is a more appropriate name because the Act extends to breach of contract claims, not just tort claims. See *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 737-42.

All statutory references to the “Tort Claims Act” have since been eliminated on the Commission’s recommendation. See 2012 Cal. Stat. ch. 759; *Statutory References to “Tort Claims Act,”* 41 Cal. L. Revision Comm’n Reports 285 (2011). The Act is now officially known as the “Government Claims Act.” See Section 810(b).

31. See *TCR #1*, *supra* note 3, at 24-25.

(1) Due to the switch in responsibility for funding trial court operations, it became inappropriate for *counties* to bear the expense of representing and indemnifying courts and court personnel. After enactment of the Lockyer-Isenberg Trial Court Funding Act, that responsibility should rest with the *state* instead. Likewise, the state (not the counties) should be entitled to manage disputes involving representation and/or indemnification,

(2) Due to the enactment of the TCEPGA, trial court personnel became employees of the *local superior court*, not the *counties*. Again, this meant that counties should be relieved of requirements to represent and indemnify court personnel.

Before explaining precisely what the Commission proposes to do, it is necessary to present some background information on the Government Claims Act and several bills that revised that act to account for trial court restructuring.

The Government Claims Act

The Government Claims Act³² was enacted in 1963,³³ on the Commission's recommendation.³⁴ It replaced a "Byzantine claims system" consisting of "numerous state statutes and local ordinances."³⁵ It was enacted "to provide a comprehensive codification of the law of governmental liability and immunity in California."³⁶

The Government Claims Act carefully balances the competing policies of governmental liability and immunity. Although there are strong interests in holding government accountable for a wrongful act that causes harm to an individual, there are also strong competing interests, including protection of the

32. Sections 810-998.3.

33. 1963 Cal. Stat. chs. 1681, 1682, 1683, 1684, 1685, 1686, 1715, 2029.

34. See *Sovereign Immunity #1 – Tort Liability of Public Entities and Public Employees*, 4 Cal. L. Revision Comm'n Reports 801 (1963); *Sovereign Immunity #2 – Claims, Actions and Judgments Against Public Entities and Public Employees*, 4 Cal. L. Revision Comm'n Reports 1001 (1963); *Sovereign Immunity #3 – Insurance Coverage for Public Entities and Public Employees*, 4 Cal. L. Revision Comm'n Reports 1201 (1963); *Sovereign Immunity #4 – Defense of Public Employees*, 4 Cal. L. Revision Comm'n Reports 1301 (1963); *Sovereign Immunity #6 – Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer*, 4 Cal. L. Revision Comm'n Reports 1501 (1963); *Sovereign Immunity #7 – Amendments and Repeals of Inconsistent Statutes*, 4 Cal. L. Revision Comm'n Reports 1601 (1963).

See also Van Alstyne, *A Study Relating to Sovereign Immunity*, 5 Cal. L. Revision Comm'n Reports 1 (1963); *Sovereign Immunity #5 – Liability of Public Entities for Ownership and Operation of Motor Vehicles*, 4 Cal. L. Revision Comm'n Reports 1401 (1963); *Sovereign Immunity #8 – Liability of Public Entities for Ownership and Operation of Motor Vehicles; Claims and Actions Against Public Entities and Public Employees*, 7 Cal. L. Revision Reports 401 (1965); *Sovereign Immunity #9 – Statute of Limitations*, 9 Cal. L. Revision Comm'n Reports 49 & 175 (1969); *Sovereign Immunity #10 – Revisions of the Governmental Liability Act*, 9 Cal. L. Revision Comm'n Reports 801 (1969).

35. *Dicampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 997.

36. *Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1001.

1 public treasury and facilitation of a functional government.³⁷ The intent of the Act
2 is to “confine potential governmental liability to rigidly delineated
3 circumstances.”³⁸

4 The Government Claims Act addresses several different but interrelated
5 substantive matters. These include:

- 6 • Liability and immunity of public entities.
- 7 • Claim presentation requirements for claims against public entities.
- 8 • Indemnification of a public employee, under specified circumstances, for a
9 judgment or a settlement stemming from an act or omission occurring in the
10 scope of employment.
- 11 • Representation of a public employee in a dispute stemming from such an act
12 or omission, as well as reimbursement for the costs of representation if the
13 employee pays in that situation.

14 For present purposes, the provisions relating to representation of a public
15 employee and reimbursement for the costs of providing representation are most
16 pertinent. Those provisions (Sections 995 to 996.6) apply to a wide range of
17 settings, including a civil case against a public employee,³⁹ an administrative
18 proceeding against a public employee,⁴⁰ a criminal case against a public
19 employee,⁴¹ and testimony of a witness on behalf of a public entity in a criminal,
20 civil, or administrative case.⁴²

21 In some contexts, representation and reimbursement is mandatory.⁴³ In other
22 contexts, it is permissive.⁴⁴

23 The provisions are carefully tailored, with various requirements and limitations
24 reflecting well-considered policy decisions. For example:

- 25 • The Act *permits* a public entity to pay for the defense of a witness who
26 testified on behalf of the public entity, but *not* if the witness’ testimony was
27 “false in any material respect, or was otherwise not given by the witness
28 with a good faith belief in its truth.”⁴⁵

37. For a more thorough discussion of the competing interests, see CLRC Staff Memorandum 2010-6, pp. 1-7.

38. *Williams v. Horvath* (1976) 16 Cal.3d 834, 838; see also *Dicampli-Mintz*, 55 Cal.4th at 991.

39. See Section 995.

40. See Section 995.6.

41. See Section 995.8.

42. See Section 995.9.

43. See Sections 995, 995.3.

44. See Sections 995.2, 995.4, 995.6, 995.8, 995.9.

45. Section 995.9.

- The Act *requires* a public entity to reimburse an employee who pays out-of-pocket for defending against a claim arising in the scope of employment, but *not* if the public entity establishes that the employee “acted or failed to act because of actual fraud, corruption or actual malice.”⁴⁶

The level of detail and delicate balancing are what one would expect in a comprehensive statutory scheme that “confine[s] potential governmental liability to rigidly delineated circumstances.”⁴⁷

Legislation Revising the Government Claims Act to Reflect Trial Court Restructuring

The drafters of the Lockyer-Isenberg Trial Court Funding Act recognized that switching from county-funding to state-funding of trial court operations necessitated changes in the handling of claims against trial courts and trial court personnel. Thus, that act itself includes a section authorizing the Judicial Council to allocate funds “for the purpose of paying legal costs resulting from lawsuits or claims arising out of the actions or conduct of a trial court, trial court bench officer, or trial court employee, and for which the state is named as a defendant or alleged to be the responsible party.”⁴⁸ However, that was just the beginning of the process of updating this area to reflect the new funding scheme for the trial courts.

Between 2000 and 2005, the Legislature, with assistance from the judiciary, enacted not just one but three different bills adjusting the Government Claims Act to work properly in the restructured trial court system.⁴⁹ The key provision in that set of reforms is Section 811.9, which does the following:

- Expressly states that judges, subordinate judicial officers, and court executive officers are “state officers” for purposes of the Government Claims Act.⁵⁰
- Expressly states that people working for a trial court are employees of the trial court for purposes of the Act.
- Requires the Judicial Council to “provide for representation, defense, and indemnification of those individuals and the court” pursuant to the Act.
- Specifies that the Judicial Council “shall provide for that representation or defense through the county counsel, the Attorney General, or other counsel.”
- Permits, but does not require, the county counsel and Attorney General to provide such representation or defense.

46. Section 996.4.

47. *Williams*, 16 Cal.3d at 838.

48. Section 77204.

49. See 2000 Cal. Stat. ch. 447, § 4.5 (SB 1533 (Costa)); 2002 Cal. Stat. ch. 1007 (AB 2321 (Hertzberg)); 2005 Cal. Stat. ch. 706, §§ 16-17, 19, 39 (AB 1742 (Committee on Judiciary)).

50. The Legislature expressly included judicial officers in the Act’s definition of “employee” in 1977. See 1977 Cal. Stat. ch. 745, § 1 (amending Section 810.2). Other trial court personnel were implicitly but not expressly included in that definition prior to the enactment of Section 811.9.

- 1 • Provides some clarification of how disqualification rules would apply to
2 such representation or defense.
- 3 • Directs the Judicial Council to adopt court rules requiring its staff to
4 “manage actions, proceedings, and claims that affect the trial courts and
5 involve superior courts, superior court judges, subordinate judicial officers,
6 court executive officers, or trial court employees in consultation with the
7 affected courts and individuals.”

8 Importantly, Section 811.9 expressly applies “[n]otwithstanding any other
9 provision of law.” In other words, its requirements and thus the content of the
10 entire Government Claims Act are apparently intended to override any contrary
11 law on the subjects they address.

12 Section 811.9 was enacted by the first of the three bills; the other two bills made
13 numerous additional changes to the Government Claims Act to “further solidify
14 and clarify the Judicial Council’s responsibility” in this area and “provide clear
15 direction” about how to handle a claim that affects a trial court or trial court
16 personnel.⁵¹ The Judicial Council also adopted implementing court rules as
17 Section 811.9 requires, which similarly reflect a broad conception of its role in
18 handling court-related litigation.⁵² Of particular note, the stated objective of one of
19 those rules is to:

- 20 (1) Ensure that the trial and appellate courts are provided with timely, quality
21 legal assistance; and
- 22 (2) Promote the cost-effective, prompt, and fair resolution of actions,
23 proceedings, and claims that affect the trial and appellate courts and involve
24 justices of the Courts of Appeal or the Supreme Court, trial court judges,
25 subordinate judicial officers, court executive officers or administrators, or
26 employees of the trial and appellate courts.⁵³

27 Collectively, the above reforms and the accompanying legislative history
28 suggest an intent to:

- 29 • Broadly address any type of claim involving the trial courts and their
30 employees;⁵⁴
- 31 • Put the Judicial Council in control, because it holds the purse strings for the
32 judiciary after enactment of the Trial Court Funding Act;⁵⁵ and

51. Senate Committee on Judiciary Analysis of AB 2321 (June 25, 2002).

52. See Cal. R. Ct. 10.201-10.203.

53. Cal. R. Ct. 10.202.

54. See, e.g., Senate Floor Analysis of AB 2321 (Aug. 7, 2002), p. 3 (referring to Judicial Council’s “authority to manage claims arising from activities of any judicial branch entity, a judge, or court employee.”).

55. See, e.g., Sections 935.8 (“The Judicial Council may adjust and pay any claim arising out of the activities of a judicial branch entity or judge thereof”) and 948.1 (“The Judicial Council may settle, adjust,

- Treat claims involving the courts in a manner that is similar to how the Government Claims Act treats claims involving the state.⁵⁶

A recent appellate decision summarizes the situation, emphasizing the strong role of the Judicial Council:

The Judicial Council establishes the policies and procedures governing the practices and procedures for budgeting in the trial courts

The Judicial Council is also the agency that is required to provide for “the representation, defense, and indemnification” of any actions affecting the courts, and shall manage any proceedings, actions or claims that affect the trial courts. It is responsible for “paying legal costs resulting from lawsuits or claims involving the state, the Judicial Council” or its employees arising out of “the actions or conduct of a trial court” or its employees, or “the actions or conduct of the Judicial Council.”⁵⁷

Proposed Revisions of Provisions Relating to Representation and Indemnification

Although the Government Claims Act has already been extensively and repeatedly revised to account for trial court restructuring, some further statutory revisions appear necessary to fully conform the codes to the new approach to representation and indemnification of trial courts and trial court employees. Most of the statutes in question are located outside the Government Claims Act.

The Commission tentatively recommends the following revisions to remove such obsolete material:

- *Section 990.2.* This section permits a county to “insure any officer or attaché of its superior and municipal courts against all or any part of the officer or attaché’s liability for injury resulting from any act or omission in the scope of the officer or attaché’s employment.” It also permits a county to insure against the expense of defending a claim against such an officer or attaché.

Due to trial court unification, the section should be amended to delete the reference to municipal courts. Due to the enactments of Section 811.9 and the Lockyer-Isenberg Trial Court Funding Act, the section should also be amended to replace the reference to a county with a reference to the Judicial Council.

- *Section 26524.* This section requires a district attorney to represent a superior or a municipal court, or a judge of such a court, upon request by

or compromise any pending action arising out of the activities of a judicial branch entity or judge thereof”), both of which were enacted by 2002 Cal. Stat. ch. 1007 (AB 2321 (Hertzberg)).

56. Senate Committee on Judiciary Analysis of AB 1742 (July 12, 2005), p. 7 (explaining that objective of AB 1742 was to “establish conformity” by “enact[ing] statutes to govern judicial branch entities that parallel existing provisions applicable to the state.”); Senate Committee on Judiciary Analysis of AB 2321 (June 25, 2002), p. 5 (“[B]ecause the courts are a separate branch of government and are not a state agency, the procedure for filing claims against them must ... be separate and parallel from those made against the state.”).

57. *Templo v. State* (2018) 24 Cal.App.5th 730, 736 (citations omitted).

1 such a judge if the court or judge in official capacity is a defendant in any
2 action. Because the Judicial Council now has responsibility for providing
3 representation in such circumstances, rather than the county, the section
4 appears to be obsolete and the Commission recommends its repeal.

5 Alternatively, the section should be amended to delete the municipal court
6 reference and permit (not require) a district attorney to provide
7 representation in the specified circumstances upon request by the Judicial
8 Council (rather than by a trial court judge).

9 The Commission seeks input on which of these approaches is preferable.

- 10 • *Section 26529.* Among other things, this section says that “[i]n counties that
11 have a county counsel, the county counsel shall discharge all the duties
12 vested in the district attorney by [Section] 26524” Because the
13 Commission is proposing to repeal Section 26524 (or at least make it
14 permissive), it is also proposing to amend Section 26529 to delete the cross-
15 reference to Section 26524.
- 16 • *Section 27647.* This section permits, but does not require, a county counsel
17 to represent the local superior court or a judge of that court in specified
18 circumstances. The section predates trial court restructuring and is located in
19 the part of the Government Code relating to county counsel. Rather than
20 being obsolete, it seems to complement and provide details regarding the
21 permissive authority now granted to a county counsel by Section 811.9.
22 However, it should be amended to apply upon request of the Judicial
23 Council, rather than upon request of the local superior court or a judge
24 thereof.
- 25 • *Section 27648.* This section says: “If, because of a declared conflict of
26 interest, any judge, who is otherwise entitled to representation pursuant to
27 Section 825, 995, or 27647, is required to retain his own counsel, such judge
28 is entitled to recover from the appropriate public entity such reasonable
29 attorney’s fees, costs, and expenses as were necessarily incurred thereby.”
30 The Commission proposes to repeal the section as obsolete.

31 With regard to representation pursuant to Section 825 or 995 (both of which
32 are in the Government Claims Act), Section 27648 is duplicative of the
33 provision in the Government Claims Act that governs reimbursement of a
34 public employee who pays out-of-pocket for representation (Section 996.4).
35 To the extent there is any difference,⁵⁸ Section 996.4 appears to override
36 Section 27648, given the “notwithstanding” clause in Section 811.9.

37 With regard to representation that a judge is “otherwise entitled to ...
38 pursuant to Section ... 27647,” there are multiple reasons for the proposed
39 repeal: (1) the text of Section 27647 is permissive and does not seem to
40 create an entitlement to representation, (2) there only appears to be one old

58. Section 996.4 refers to a “specific conflict of interest,” while Section 27648 refers to a “declared conflict of interest.”

1 case holding that reimbursement was proper under Section 27648,⁵⁹ and it
2 involved a narrow set of facts that are unlikely to arise in the restructured
3 court system,⁶⁰ (3) a later decision limited that case to its facts,⁶¹ and (4)
4 there seem to be few, if any, recent cases involving Sections 27647 and
5 27648.

6 Most importantly, however, the three bills revising the Government Claims
7 Act to reflect trial court restructuring, as well as the implementing court
8 rules, evince a legislative intent to build a comprehensive system for
9 handling claims affecting the judicial branch. There is no indication of an
10 intent to treat judges specially. On the contrary, the intent seems to be to
11 bring the judiciary *squarely within* the Government Claims Act and its
12 carefully-crafted rules on government liability, including reimbursement of
13 a public employee's costs of representation when there is a conflict of
14 interest. Consequently, the part of Section 27648 referring to representation
15 pursuant to Section 27647 appears to be obsolete, just like the parts referring
16 to representation pursuant to Sections 825 and 995.⁶²

17 To prevent confusion and further coordinate the statutes governing
18 representation and indemnification of trial courts and trial court personnel, the
19 Commission also suggests two nonsubstantive clarifications:

- 20 • A sentence in Section 811.9 currently says that “[t]he county counsel and
21 the Attorney General may, but are not required to, provide representation or
22 defense *for the Judicial Council*.”⁶³ That statement makes it sound as if *the*
23 *Judicial Council itself* would be represented or defended by the county
24 counsel or Attorney General, which almost certainly was not the intended
25 meaning. The intent would be more clear if the sentence was revised to say:
26 “The county counsel and the Attorney General may, but are not required to,
27 provide representation or defense for a trial court, judge, subordinate
28 judicial officer, court executive officer, or trial court employee if the
29 Judicial Council requests that assistance to fulfill its duties under this
30 section.”

59. *Alhambra Municipal Court District v. Bloodgood* (1982) 137 Cal.App.3d 29.

60. *Bloodgood* involved a county's duty to provide reimbursement for representation of municipal courts in negotiations over a proposed county budget that would have drastically reduced the funding for those courts, posing an “imminent and pervasive” threat to the functioning of the courts. 137 Cal.App.3d at 39. This budget threat was thus created by an entity (the county) in a different branch of government than the courts, yet that entity was also responsible for representing the courts and their personnel.

In contrast, the Judicial Council is now in charge of providing representation for trial courts and their employees. It is in the same branch of government as the trial courts and it is unlikely to do anything that would pose an existential threat to the functioning of the judicial branch; its constitutional duty is precisely the opposite.

61. See *Municipal Court v. County of Placer* (1988) 200 Cal.App.3d 1173, 1179.

62. Emphasis added.

63. For a fuller discussion of the proposed repeal of Section 27648, see CLRC Staff Memorandum 2021-37, pp. 32-40.

- Section 68111 currently provides that “[w]henver any judge of any court of this state is a witness in his official capacity as judge in any action or proceeding, such judge shall be entitled to be represented at such action or proceeding by counsel of his choice.” However, this section “does not provide for the expenditure of public funds for the expense of counsel retained by the judge.”⁶⁴ Rather, representation of a judge-witness at public expense appears to be governed by the Government Claims Act, particularly Section 995.9 (addressing defense and indemnification of a witness who testifies on behalf of a public entity). The Commission proposes to amend Section 68111 to make these points more clear.

Other Proposed Revisions

In other work relating to trial court restructuring, the Commission came across two provisions (Business and Professions Code Section 6092.5 and Penal Code Section 2620) that refer to the “courts in the county.” Those references are obsolete due to trial court unification. Municipal courts no longer exist and there is only one superior court in each county. The Commission proposes to amend these sections to reflect as much.⁶⁵

Request for Comments

The Commission seeks public comment on its tentative recommendation. It encourages comments on any aspect of the proposal, but it would especially appreciate comments on the issues identified in the Notes that accompany some of the proposed legislation.

Comments can be in any format and can be emailed to bgaal@clrc.ca.gov. Comments supporting the proposed revisions are just as important as comments suggesting changes or expressing other views.

The Commission also welcomes comments on other statutes that require revisions to reflect trial court restructuring, regardless of whether they relate to the topics discussed in this tentative recommendation.

Comments from knowledgeable persons are invaluable in the Commission’s study process. The Commission sincerely thanks everyone who takes the time to review the tentative recommendation and express their views.

64. 62 Ops.Cal.Atty.Gen. 611 (1979).

65. See proposed amendments of Bus. & Prof. Code § 6092.5 and Penal Code § 2620 *infra*.

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PROPOSED LEGISLATION

BUSINESS AND PROFESSIONS CODE

Bus. & Prof. Code § 6092.5 (amended). Duties of disciplinary agency

SEC. _____. Section 6092.5 of the Business and Professions Code is amended to read:

6092.5. In addition to any other duties specified by law, the State Bar shall do all of the following:

(a) Promptly notify the complainant of the disposition of each matter.

(b) Notify all of the following of a lawyer's involuntary enrollment as an inactive licensee and termination of that enrollment, or any suspension or disbarment, and the reinstatement to active license of a suspended or disbarred attorney:

(1) The presiding judge of the superior court in the county where the attorney most recently maintained an office for the practice of law, with a request that the judge notify the ~~courts and~~ judges in the county.

(2) The local bar association, if there is one, in the county or area where the attorney most recently maintained an office for the practice of law.

(3) The appropriate disciplinary authority in any other jurisdiction where the attorney is admitted to practice.

(c) Upon receipt of the certified copy of the record of conviction of a lawyer, as provided by subdivision (c) of Section 6101, promptly forward a certified copy of the judgment of conviction to the disciplinary agency in each jurisdiction in which the lawyer is admitted.

(d) Maintain permanent records of discipline and other matters within its jurisdiction, and compile statistics to aid in the administration of the system, including, but not limited to, a single log of all complaints received, investigative files, statistical summaries of docket processing and case dispositions, transcripts of all proceedings which have been transcribed, and other records as the State Bar or court require to be maintained.

(e) Expunge records of the State Bar as directed by the California Supreme Court.

(f) Pursuant to directions from the California Supreme Court, undertake whatever investigations are assigned to it.

(g) Provide information to prospective complainants regarding the nature and procedures of the disciplinary system, the criteria for prosecution of disciplinary complaints, the client security fund, and fee arbitration procedures.

(h) Inform the public, local bar associations and other organizations, and any other interested parties about the work of the State Bar and the right of all persons to make a complaint.

(i) Make agreements with respondents in lieu of disciplinary proceedings, regarding conditions of practice, further legal education, or other matters. These agreements may be used by the State Bar in any subsequent proceeding involving the lawyer.

Comment. Subdivision (b) of Section 6092.5 is amended to reflect unification of the municipal and superior courts pursuant to former Article VI, Section 5(e), of the California Constitution.

GOVERNMENT CODE

Gov't Code § 811.9 (amended). Representation, defense, and indemnification of trial courts and trial court personnel

811.9. (a) Notwithstanding any other provision of law, judges, subordinate judicial officers, and court executive officers of the superior courts are state officers for purposes of Part 1 (commencing with Section 810) to Part 7 (commencing with Section 995), inclusive, and trial court employees are employees of the trial court for purposes of Part 1 (commencing with Section 810) to Part 7 (commencing with Section 995), inclusive. The Judicial Council shall provide for representation, defense, and indemnification of those individuals and the court pursuant to Part 1 (commencing with Section 810) to Part 7 (commencing with Section 995), inclusive. The Judicial Council shall provide for that representation or defense through the county counsel, the Attorney General, or other counsel. The county counsel and the Attorney General may, but are not required to, provide representation or defense for ~~the Judicial Council~~ a trial court, judge, subordinate judicial officer, court executive officer, or trial court employee if the Judicial Council requests that assistance to fulfill its duties under this section. The fact that a justice, judge, subordinate judicial officer, court executive officer, court employee, the court, the Judicial Council, or ~~the Administrative Office of the Courts~~ the staff of the Judicial Council is or was represented or defended by the county counsel, the Attorney General, or other counsel shall not be the sole basis for a judicial determination of disqualification of a justice, judge, subordinate judicial officer, the county counsel, the Attorney General, or other counsel in unrelated actions.

(b) To promote the cost-effective, prompt, and fair resolution of actions, proceedings, and claims affecting the trial courts, the Judicial Council shall adopt rules of court requiring ~~the Administrative Office of the Courts~~ its staff to manage actions, proceedings, and claims that affect the trial courts and involve superior courts, superior court judges, subordinate judicial officers, court executive officers, or trial court employees in consultation with the affected courts and individuals. The ~~Administrative Office of the Courts'~~ staff's management of these actions, proceedings, and claims shall include, but not be limited to, case management and administrative responsibilities such as selection of counsel and making strategic and settlement decisions.

(c) Nothing in this section shall be construed to affect the employment status of subordinate judicial officers, court executive officers, and trial court employees related to any matters not covered by subdivision (a).

Comment. Section 811.9 is amended for purposes of clarification. This is not a substantive change.

The section is also amended to update the references to the Administrative Office of the Courts. The Judicial Council no longer uses that name to refer to its staff. See Cal. R. Ct. 10.81 & Advisory Committee Comment.

Gov't Code § 990.2 (amended). Authority to insure court officer or attaché

SEC. ____ . Section 990.2 of the Government Code is amended to read:

~~990.2. A county~~ The Judicial Council may insure any officer or attaché of its superior ~~and municipal~~ courts against all or any part of the officer or attaché's liability for injury resulting from any act or omission in the scope of the officer or attaché's employment, and also may insure against the expense of defending any claim against ~~such~~ the officer or attaché, whether or not liability exists on ~~such~~ that claim.

Comment. Section 990.2 is amended to reflect:

(1) Unification of the municipal and superior courts pursuant to former Article VI, Section 5(e) of the California Constitution.

(2) Enactment of the Trial Court Funding Act. See Section 70003 ("court operations" defined), 77200 (state funding of trial court operations).

(3) Enactment of Section 811.9 (2000 Cal. Stat. ch. 447, § 4.5) and subsequent legislation clarifying and solidifying the Judicial Council's role in handling claims against trial courts and trial court personnel (see 2002 Cal. Stat. ch. 1007 and 2005 Cal. Stat. ch. 706, § 16).

The section is also amended to make technical changes.

Note. Counties are no longer responsible for trial court operations, so the above amendment of Section 990.2 would authorize the Judicial Council to obtain insurance for liability and defense of trial court officers and attachés, instead of the counties.

The Commission is not certain whether the Judicial Council needs this authority. If the authority is unnecessary, or is already provided by some other source, it may be appropriate to repeal Section 990.2, instead of amending it.

The Commission welcomes comments on any aspect of this tentative recommendation, but it would especially appreciate comments on this matter.

Gov't Code § 26524 (repealed). Representation of court or judge by district attorney

SEC. ____ . Section 26524 of the Government Code is repealed.

~~26524. Upon request of any judge of the superior or municipal court, the district attorney shall appear for and represent the court or judge if the court or judge in his or her official capacity is a party defendant in any action.~~

Comment. Section 26524 is repealed to reflect:

(1) Unification of the municipal and superior courts pursuant to former Article VI, Section 5(e) of the California Constitution.

(2) Enactment of Section 811.9 (2000 Cal. Stat. ch. 447, § 4.5) and subsequent legislation clarifying and solidifying the Judicial Council's role in handling claims against trial courts and trial court personnel (see 2002 Cal. Stat. ch. 1007 and 2005 Cal. Stat. ch. 706, § 16; see also Sections 810-998.3; Cal. R. Ct. 20.201-10.203).

Note. Section 26524 is proposed for repeal because it may have been superseded by Section 811.9, which applies “[n]otwithstanding any other provision of law.” Among other things, Section 811.9 directs the Judicial Council to provide for representation or defense of trial courts and trial court personnel “through the county counsel, the Attorney General, *or other counsel.*” (Emphasis added.)

Are there circumstances under which the Judicial Council might want to fulfill its duty under Section 811.9 by using a district attorney? If not, then Section 26524 appears to be unnecessary and should be repealed as proposed.

If the answer is “yes,” however, then perhaps Section 26524 should be amended, rather than repealed. In particular, perhaps the section should be revised to permit (instead of require) a district attorney to represent a superior court or superior court judge upon “request of the Judicial Council” (instead of upon “request of any judge of the superior or municipal court”).

The Commission welcomes comments on any aspect of this tentative recommendation, but it would especially appreciate comments on this matter.

Gov’t Code § 26529 (amended). County counsel to discharge duties of district attorney

SEC. ____ . Section 26529 of the Government Code is amended to read:

26529. (a) In counties that have a county counsel, the county counsel shall discharge all the duties vested in the district attorney by Sections 26520, 26522, 26523, ~~26524~~, and 26526. The county counsel shall defend or prosecute all civil actions and proceedings in which the county or any of its officers is concerned or is a party in ~~his or her~~ the officer’s official capacity. Except where the county provides other counsel, the county counsel shall defend as provided in Part 7 (commencing with Section 995) of Division 3.6 of Title 1 of the Government Code any action or proceeding brought against an officer, employee, or servant of the county.

(b) Notwithstanding any other provision of law, the County Counsel of the County of Solano may, and when directed by the board of supervisors of that county shall, bring a civil action when the county, or any of its officers, has a cause of action to abate a public nuisance in the county. The County Counsel and the District Attorney of Solano County have the concurrent right to bring an action to abate a public nuisance pursuant to this subdivision.

Comment. Section 26529 is amended to reflect the repeal of Section 26524, concerning representation of a trial court or trial court judge by the district attorney.

The section is also amended to eliminate gendered pronouns.

Gov’t Code § 27647 (amended). Representation of court or judge by county counsel

SEC. ____ . Section 27647 of the Government Code is amended to read:

27647. (a) If requested to do so by the ~~superior court of the county of the county~~ ~~counsel, or by any judge thereof~~ Judicial Council, and insofar as ~~such~~ these duties are not in conflict with, and do not interfere with, other duties, the county counsel may represent ~~any such~~ the superior court or a judge thereof in all matters and questions of law pertaining to any of ~~such~~ the judge’s duties, including any representation authorized by Section 68111 and representation in all civil actions and proceedings in any court in which with respect to the court’s or judge’s official capacity, ~~such~~ the court or judge is concerned or is a party.

(b) This section does not apply to any of the following:

(1) Any criminal proceedings in which a judge is a defendant.

(2) Any grand jury proceedings.

(3) Any proceeding before the Commission on Judicial ~~Qualifications~~
Performance.

(4) Any civil action or proceeding arising out of facts under which the judge was convicted of a criminal offense in a criminal proceeding.

Comment. Section 27647 is amended to reflect the enactment of Section 811.9 (2000 Cal. Stat. ch. 447, § 4.5) and subsequent legislation clarifying and solidifying the Judicial Council’s role in handling claims against trial courts and trial court personnel (see 2002 Cal. Stat. ch. 1007 and 2005 Cal. Stat. ch. 706, § 16; see also Sections 810-998.3; Cal. R. Ct. 20.201-10.203).

The section is also amended to update an obsolete reference to the “Commission on Judicial Qualifications,” which is now known as the “Commission on Judicial Performance.”

The section is further amended to make technical changes.

Gov’t Code § 27648 (repealed). Reimbursement where judge is required to retain own counsel due to conflict of interest

~~27648. If, because of a declared conflict of interest, any judge, who is otherwise entitled to representation pursuant to Section 825, 995, or 27647, is required to retain his own counsel, such judge is entitled to recover from the appropriate public entity such reasonable attorney’s fees, costs, and expenses as were necessarily incurred thereby.~~

Comment. Section 27648 is repealed to reflect:

(1) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655).

(2) Enactment of the Trial Court Employment Protection and Governance Act (“TCEPGA”), 2000 Cal. Stat. ch. 1010 (see generally Sections 71600-71675).

(3) Enactment of three bills adjusting the Government Claims Act (Sections 810-998.3) to reflect enactment of the Trial Court Funding Act and the TCEPGA: 2000 Cal. Stat. ch. 447, § 4.5; 2002 Cal. Stat. ch. 1007; and 2005 Cal. Stat. ch. 706, §§ 16-17, 19, 39. Those bills made the Judicial Council responsible for providing representation, in accordance with the Government Claims Act, for trial courts and trial court personnel in matters relating to their work. For the provision in the Government Claims Act governing reimbursement of a public employee’s attorney’s fees, costs, and expenses, see Section 996.4. See also Section 811.9 (defining Judicial Council’s role and scope of responsibility “[n]otwithstanding any other provision of law”).

Gov’t Code § 53214.5 (amended). County deferred compensation plans

SEC. _____. Section 53214.5 of the Government Code is amended to read:

53214.5. A county or city and county ~~which~~ that pays the salaries, either in whole or in part, of judges of the superior ~~and municipal~~ courts and the officers and attachés of those courts may allow the judges, officers, and attachés to participate in any deferred compensation plan established pursuant to this article. Any county or city and county is hereby authorized to enter into a written agreement with the judges, officers, and attachés providing for deferral of a portion of their wages. The judges, officers, and attachés may authorize deductions

1 to be made from their wages for the purpose of participating in the deferred
2 compensation plan.

3 **Comment.** Section 53214.5 is amended to reflect unification of the municipal and superior
4 courts pursuant to former Article VI, Section 5(e) of the California Constitution.

5 The section is also amended to make a grammatical correction.

6 **Gov't Code § 68111 (amended). Representation of judge appearing as witness in official**
7 **capacity**

8 SEC. _____. Section 68111 of the Government Code is amended to read:

9 68111. (a) Whenever any judge of any court of this state is a witness in ~~his~~ an
10 official capacity as judge in any action or proceeding, ~~such~~ the judge shall be
11 entitled to be represented at ~~such~~ the action or proceeding by counsel of ~~his~~ the
12 judge's choice, at the judge's own expense.

13 (b) Representation of a judge at public expense is governed by the Government
14 Claims Act (Division 3.6 (commencing with Section 810) of Title 1), including,
15 but not limited to, Section 995.9.

16 **Comment.** Section 68111 is amended for purposes of clarification. This is not a substantive
17 change. See 62 Ops.Cal.Atty.Gen. 611 (1979) (Section 68111 "does not provide ... for the
18 expenditure of public funds for the expense of counsel retained by the judge."); see also Section
19 811.9 (establishing system under which Judicial Council is responsible for handling claims
20 affecting trial courts and trial court personnel, which applies "[n]otwithstanding any other
21 provision of law) and Section 995.9 (stating rules for defense and indemnification of witness who
22 testifies on behalf of public entity, which apply "[n]otwithstanding any other provision of law").

23 The section is also amended to make technical changes.

24 **Gov't Code § 69894.3 (amended). Court personnel in Los Angeles County**

25 SEC. _____. Section 69894.3 of the Government Code is amended to read:

26 69894.3. Employees of the superior court in each county ~~having a population of~~
27 ~~over 2,000,000~~ of the first class shall be entitled to step advancement, vacation,
28 sick leave, holiday benefits and other leaves of absence and other benefits as may
29 be directed by rules of the court. Where statutes require implementation by local
30 ordinances for the extension of benefits to local officers and employees, these may
31 be made applicable by rule to court personnel, including but not limited to jurors,
32 and judges.

33 These benefits shall also include the same lump sum payments for sick leave
34 and vacation for the superior court employees when they are separated from the
35 service as are made to county employees of the county; except that lump-sum
36 payments to court commissioners when separated from the service of the superior
37 court shall be limited to accrued vacation if any, as is provided by local rule of
38 court, exclusive of accrued sick leave.

39 Court employees under this section shall have the right to transfer to other
40 departments in the county government, subject to the approval of the board of
41 supervisors, the county charter, and other usual conditions that may be placed
42 upon the transfer, including, but not limited to, a requirement that the transferee
43 successfully complete an appropriate civil service examination. The right of

1 transfer shall not give any employee any additional rights by reason of his
2 employment with the court, other than those to which he would have been entitled
3 if the employment had been with a different department of the county government.

4 Employment by the court shall be deemed to be employment by the county, if
5 approved by rule of court, for the purpose of determining a court employee's
6 rights with respect to a county's ordinances providing for salary step
7 advancements and other employee benefits and rights, including, but not limited
8 to, amount of compensation, vacations, sick leave, and accumulated sick leave.

9 In any such county attachés may be voluntarily transferred from a position in
10 one judicial district to a position in another within the county and promoted or
11 voluntarily demoted from a position in one judicial district to a position in another
12 within the county in substantially the same manner as transfers, demotions and
13 promotions are authorized generally in county departments or between
14 departments of the county.

15 Rules of the court may include other matters pertaining to the general
16 administration of the court, including conditions of employment of court
17 personnel, including but not limited to jurors and judges. When rules are adopted
18 by a majority of the judges and filed with the Judicial Council they shall have the
19 same status as other rules of court adopted pursuant to Section 68070.

20 When requested to do so by the court the county shall through the county civil
21 service commission furnish to the court services as may be required in connection
22 with the recruitment and employment of court officers and employees.

23 **Comment.** Section 69894.3 is amended to make clear that it only applies to a county of the
24 first class (i.e., Los Angeles County). This is not a substantive change. See Sections 28020,
25 28022; see also CLRC Staff Memorandum 2021-28, pp. 4-9 & Exhibit pp. 1-8 (collecting and
26 discussing legislative history materials).

27 **Gov't Code § 69894.4 (amended). Expense allowances**

28 SEC. _____. Section 69894.4 of the Government Code is amended to read:

29 ~~69894.4. All of the employees provided for in Section 69894.1 and judges of the~~
30 ~~superior court in each county having a population of over 2,000,000 shall be~~
31 ~~allowed actual traveling and necessary expenses incurred while engaged in the~~
32 ~~duties of their office, which shall be the same as allowed to officers and~~
33 ~~employees of such county. Any expenses for travel outside of the county shall~~
34 ~~require the prior approval of the board of supervisors.~~

35 ~~Whenever;~~ In each county of the first class, whenever, because of the nature of
36 the duties of any judge or officer of the court, the ~~board of supervisors~~ court
37 determines that the best interest of ~~the county and~~ the court would be served, it
38 may assign an automobile in lieu of allowing travel expenses.

39 ~~The salaries provided for in said Section 69894.1 shall be paid by the county out~~
40 ~~of such fund as other salary demands against the county are paid. The expenses~~
41 ~~provided for in this section shall be paid in monthly installments out of the general~~

~~fund. Salaries and expenses shall be audited in the same manner as the law requires for other demands against the county.~~

Comment. Section 69894.4 is amended to reflect:

(1) Enactment of the Trial Court Employment Protection and Governance Act. See Sections 71620 (trial court personnel), 71623 (salaries), 71673 (authority of court).

(2) Enactment of Section 69505 (business-related travel expenses of trial court judges and employees).

(3) Enactment of the Trial Court Funding Act. See Sections 77001 (local trial court management), 77003 (“court operations” defined), 77009 (Trial Court Operations Fund), 77200 (state funding of trial court operations); see also Cal. R. Ct. 810 (further definition of “court operations”).

(4) Repeal of former Section 69894.1. See 2002 Cal. Stat. ch. 784, § 310; see also Statutes Made Obsolete by Trial Court Restructuring: Part 1, 32 Cal. L. Revision Comm’n Reports 1, 279-80 (2002).

Section 69894.4 is also amended to make clear that it only applies to a county of the first class (i.e., Los Angeles County). This is not a substantive change. See Sections 28020, 28022; see also CLRC Staff Memorandum 2021-28, pp. 4-9 & Exhibit pp. 1-8 (collecting and discussing legislative history materials).

Gov’t Code § 73643 (added). Repeal of Article 9

SEC. _____. Section 73643 is added to the Government Code, to read:

73643. (a) This article shall remain in effect only until January 1, 2072, and as of that date is repealed unless a later-enacted statute, which is enacted before January 1, 2072, deletes or extends that date.

(b) The repeal of this article does not affect any right or benefit to which a person was entitled on the date of repeal.

Comment. Section 73643 is added to provide for the automatic repeal of Article 9 (commencing with Section 73640), relating to the municipal court in the El Cajon Judicial District, which was located in San Diego County. To protect persons who served that court, as well as their beneficiaries, this repeal is delayed for fifty years. It is also subject to the saving clause in subdivision (b) and the uncodified saving clause in the act that added this section.

Note. For convenient reference, the current text of Article 9 (commencing with Section 73640) of Chapter 10 of Title 8 of the Government Code is set out below.

Article 9. El Cajon Judicial District

73640. This article applies to the municipal court established in a district embracing the Judicial District of El Cajon.

73642. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan, except that if deferred compensation is selected, no adjustment based on retirement tier shall apply, and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of

insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Title 2) that the state provides to retired superior court judges under that act.

Gov't Code § 73953 (added). Repeal of Article 16

SEC. _____. Section 73953 is added to the Government Code, to read:

73953. (a) This article shall remain in effect only until January 1, 2072, and as of that date is repealed unless a later-enacted statute, which is enacted before January 1, 2072, deletes or extends that date.

(b) The repeal of this article does not affect any right or benefit to which a person was entitled on the date of repeal.

Comment. Section 73953 is added to provide for the automatic repeal of Article 16 (commencing with Section 73950), relating to the municipal court in the North County Judicial District, which was located in San Diego County. To protect persons who served that court, as well as their beneficiaries, this repeal is delayed for fifty years. It is also subject to the saving clause in subdivision (b) and the uncodified saving clause in the act that added this section.

Note. For convenient reference, the current text of Article 16 (commencing with Section 73950) of Chapter 10 of Title 8 of the Government Code is set out below.

Article 16. North County Judicial District

73950. This article applies to the Municipal Court of the North County Judicial District.

73952. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan, except that if deferred compensation is selected, no adjustment based on retirement tier shall apply, and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Title 2) that the state provides to retired superior court judges under that act.

Gov't Code § 74146 (added). Repeal of Article 20

SEC. _____. Section 74146 is added to the Government Code, to read:

74146. (a) This article shall remain in effect only until January 1, 2072, and as of that date is repealed unless a later-enacted statute, which is enacted before January 1, 2072, deletes or extends that date.

(b) The repeal of this article does not affect any right or benefit to which a person was entitled on the date of repeal.

Comment. Section 74146 is added to provide for the automatic repeal of Article 20 (commencing with Section 74130), relating to the municipal courts in Riverside County. To protect persons who served those courts, as well as their beneficiaries, this repeal is delayed for

fifty years. It is also subject to the saving clause in subdivision (b) and the uncodified saving clause in the act that added this section.

Note. For convenient reference, the current text of Article 20 (commencing with Section 74130) of Chapter 10 of Title 8 of the Government Code is set out below.

Article 20. Riverside County

74130. This article applies to the municipal courts established in Riverside County.

74145. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the county flexible benefits plan.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive the same long-term disability insurance as provided by the County of Riverside for other elected county officials.

Gov't Code § 74343 (added). Repeal of Article 25

SEC. _____. Section 74343 is added to the Government Code, to read:

74343. (a) This article shall remain in effect only until January 1, 2072, and as of that date is repealed unless a later-enacted statute, which is enacted before January 1, 2072, deletes or extends that date.

(b) The repeal of this article does not affect any right or benefit to which a person was entitled on the date of repeal.

Comment. Section 74343 is added to provide for the automatic repeal of Article 25 (commencing with Section 74340), relating to the municipal court in the San Diego Judicial District. To protect persons who served that court, as well as their beneficiaries, this repeal is delayed for fifty years. It is also subject to the saving clause in subdivision (b) and the uncodified saving clause in the act that added this section.

Note. For convenient reference, the current text of Article 25 (commencing with Section 74340) of Chapter 10 of Title 8 of the Government Code is set out below.

Article 25. San Diego Judicial District

74340. This article applies to the municipal court established in a district embracing that portion of the City of San Diego not included within the South Bay Municipal Court District.

74342. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan, except that if deferred compensation is selected, no adjustment based on retirement tier shall apply, and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Title 2) that the state provides to retired superior court judges under that act.

Gov't Code § 74743 (added). Repeal of Article 30

SEC. _____. Section 74743 is added to the Government Code, to read:

74743. (a) This article shall remain in effect only until January 1, 2072, and as of that date is repealed unless a later-enacted statute, which is enacted before January 1, 2072, deletes or extends that date.

(b) The repeal of this article does not affect any right or benefit to which a person was entitled on the date of repeal.

Comment. Section 74743 is added to provide for the automatic repeal of Article 30 (commencing with Section 74740), relating to the municipal court in the South Bay Judicial District, which was located in San Diego County. To protect persons who served that court, as well as their beneficiaries, this repeal is delayed for fifty years. It is also subject to the saving clause in subdivision (b) and the uncodified saving clause in the act that added this section.

Note. For convenient reference, the current text of Article 30 (commencing with Section 74740) of Chapter 10 of Title 8 of the Government Code is set out below.

Article 30. South Bay Judicial District

74740. Notwithstanding Section 71040, there shall be a municipal court in a judicial district, embracing the Cities of Chula Vista, Coronado, Imperial Beach, National City, that portion of the City of San Diego lying southerly of the City of Chula Vista and the portion of the City of San Diego lying within San Diego Bay south of a westerly continuation of the northern boundary of National City to the point of intersection with the eastern boundary of the City of Coronado, and such other contiguous area as the board of supervisors may direct, designated the South Bay Judicial District.

This article applies to the municipal court established pursuant to this section.

74742. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan, except that if deferred compensation is selected, no adjustment based on retirement tier shall apply, and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in those benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Title 2) that the state provides to retired superior court judges under that act.

Gov't Code § 77210 (amended). Benefits for municipal court judges retired under Judges' Retirement System

SEC. _____. Section 77210 of the Government Code is amended to read:

77210. (a) The state shall provide municipal court judges retired under the Judges' Retirement System with retiree health, dental, and vision care plans equal to and in the same manner as the health, dental, and vision benefits provided to retired superior court judges.

1 (b) No judge shall have any salary or benefits reduced solely by reason of the
2 enactment of this section.

3 (c) This section shall remain in effect only until January 1, 2072, and as of that
4 date is repealed unless a later-enacted statute, which is enacted before January 1,
5 2072, deletes or extends that date.

6 (d) The repeal of this section does not affect any right or benefit to which a
7 person was entitled on the date of repeal.

8 **Comment.** Section 77210 is amended to provide for its automatic repeal. To protect municipal
9 court judges who retired under the Judges' Retirement System, as well as their beneficiaries, this
10 repeal is delayed for fifty years. It is also subject to the saving clause in subdivision (b) and the
11 uncodified saving clause in the act that added this section.

12 PENAL CODE

13 Penal Code § 2620 (amended). Order for person's temporary removal from state prison

14 SEC. _____. Section 2620 of the Penal Code is amended to read:

15 2620. (a) When it is necessary to have a person imprisoned in the state prison
16 brought before any court to be tried for a felony, or for an examination before a
17 grand jury or magistrate preliminary to ~~such~~ trial for a felony, or for the purpose of
18 hearing a motion or other proceeding, to vacate a judgment, an order for the
19 prisoner's temporary removal from ~~said~~ prison, and for the prisoner's production
20 before ~~such~~ the court, grand jury, or magistrate, must be made by the superior
21 court of the county in which ~~said~~ the action, motion, or examination is pending or
22 by a judge ~~thereof~~; ~~such~~ thereof. The order shall be made only upon the affidavit
23 of the district attorney or defense attorney, stating the purpose for which ~~said~~ that
24 person is to be brought before the court, grand jury, or magistrate or upon the
25 court's own motion. The order shall be executed by the sheriff of the county in
26 which it shall be made, whose duty it shall be to bring the prisoner before the
27 proper court, grand jury, or magistrate, to safely keep the prisoner, and when the
28 prisoner's presence is no longer required to return the prisoner to the prison from
29 whence the prisoner was ~~taken~~; the taken. The expense of executing ~~such~~ that
30 order shall be a proper charge against, and shall be paid by, the county in which
31 the order shall be made.

32 ~~Such order~~ (b) An order pursuant to subdivision (a) shall recite the purposes for
33 which ~~said~~ that person is to be brought before the court, grand jury, or magistrate,
34 and shall be signed by the judge making the order and sealed with the seal of the
35 court. The order must be to the following effect:

36 County of ____ (as the case may be).

37 The people of the State of California to the warden of ____:

38 An order having been made this day by me, that A.B. be produced in the ____
39 court (or before the grand jury, as the case may be) to be prosecuted or examined
40 for the crime of ____, a felony (or to have ~~said~~ that motion heard), you are

1 commanded to deliver the prisoner into the custody of ____ for the purpose of
2 (recite purposes).

3 Dated this ____ day of ____, 1920.

4 (c) When a prisoner is removed from a state prison under this section, the
5 prisoner shall remain in the constructive custody of the warden thereof. During the
6 prisoner's absence from the prison, the prisoner may be ordered to appear in other
7 felony proceedings as a defendant or witness in the ~~courts~~ superior court of the
8 county from which the original order directing removal issued. A copy of the
9 written order directing the prisoner to appear before ~~any such~~ that court shall be
10 forwarded by the district attorney to the warden of the prison having protective
11 custody of the prisoner.

12 **Comment.** Section 2620 is amended to reflect unification of the municipal and superior courts
13 pursuant to former Article VI, Section 5(e), of the California Constitution.

14 The section is also amended to insert subdivision labels and make other technical corrections.

15 UNCODIFIED

16 **Uncodified (added). Saving clause — rights and benefits**

17 SEC. _____. If a right, privilege, duty, authority, or status, including, but not
18 limited to, a qualification for office, salary range, or employment benefit, is based
19 on a provision of law repealed by this act, and if a statute, order, rule of court,
20 memorandum of understanding, or other legally effective instrument provides that
21 the right, duty, authority, or status continues for a period beyond the effective date
22 of the repeal, that provision of law continues in effect for that purpose,
23 notwithstanding its repeal by this act.
